

PATENT  
101.0044-03000

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary K. Michelson, M.D.

Serial No: N/A

Filed: February 2, 2000

For: APPARATUS FOR INSERTING  
SPINAL IMPLANTS (AS  
AMENDED)

Art Unit: 3764

Examiner: Brown, M.



#10

**INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97 & 1.98**

Box Patent Application  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), applicant brings to the attention of the Examiner the documents listed on the attached PTO Form 1449. This Information Disclosure Statement is being filed prior the events recited in Section 1.97(b).

The present application is a continuation of Serial No. 08/482,162 which is a divisional application of Serial No. 08/396,414 (the '414 application) filed February 27, 1995 on which Applicant claims priority rights under 35 U.S.C. § 120. The '414 application is a continuation-in-part of Serial No. 08/074,781, now U.S. Patent No. 5,484,437, which is a continuation-in-part of application Serial No. 07/968,240, now U.S. Patent No. 5,741,253, which is a continuation application of Serial No. 07/698,674, now abandoned, which is a divisional application of Serial No. 07/205,935, now U.S. Patent No. 5,015,247.

Copies of the listed documents were previously submitted to the Examiner in Applicant's prior '414 application. Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making the appropriate notations on the attached form.

Applicant brings to the Examiner's attention that the '247 patent is the subject of litigation in the United States District Court for the Central District of California, Western Division, Civil Action No. 95-0258RG, hereinafter referred to as Litigation 1. The claims of the '247 patent are directed to a fusion implant.

The '253 patent is the subject of litigation in the United States District Court for the Western District of Tennessee, Civil Action No. 98-2369GA(JSG), hereinafter referred to as Litigation 2. The claims of the '253 patent are generally directed to a method for preparing adjacent vertebrae to receive an implant.

In Litigations 1 and 2, the Defendants have asserted that various references are pertinent to the issue of validity of the '247 and '253 patents respectively under 35 U.S.C. §§102 and 103. Applicant notes for the Examiner on the attached Form 1449 in the column for the Examiner's initials the references identified by Defendants in Litigations 1 and/or 2 by the designation "Lit. 1" and "Lit. 2".

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material to patentability or constitute "prior art". If the Examiner applies any of the documents as prior art against any claim in the application and applicant determines that the cited documents do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicant also brings to the Examiner's attention Applicant's co-pending applications 08/480,684 filed June 7, 1995; 08/484,927 filed June 7, 1995; and 08/480,461 filed June 7, 1995.

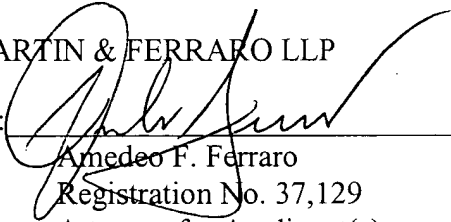
Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If it should be determined that for any reason either an insufficient or excessive fee has been paid, please charge any insufficiency or credit any overpayment necessary to ensure consideration of the information disclosure statement for the above-identified application to Deposit Account No. 50-1066. A copy of this paper is enclosed.

Respectfully submitted,

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FORM PTO-1449			Docket Number (Optional) 101.0044-03000		Application No.	
INFORMATION DISCLOSURE CITATION IN AN APPLICATION			Applicant Gary K. Michelson, M.D.			
(Use several sheets if necessary)			Filing Date January 27, 2000		Group Art Unit 3	
<b>U.S. PATENT DOCUMENTS</b>						
EXAMINER INITIAL	DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
Lit. 1	Re. 31,865	4/16/85	Roux			
	Re. 34,871	3/7/95	McGuire et al.			
	Des. 245,259	8/2/77	Shen			
	Des. 257,511	11/11/80	Zahn			
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	2,514,665	7/11/50	Myller			
	2,537,070	1/9/51	Longfellow			
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	2,789,558	4/23/57	Rush			
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Lit. 2	3,128,768	4/14/64	Geistauts			
Lit. 1	3,298,372	1/17/67	Feinberg			
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Lit. 2	3,486,505	12/30/69	Morrison			
Lit. 1	3,604,487	9/14/71	Gilbert			
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Lit. 2	3,875,595	4/8/75	Froning			
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Lit. 2	3,892,232	7/1/75	Neufeld			
Lit. 1	3,905,047	9/16/75	Long			
	3,915,151	10/28/75	Kraus			
	3,916,907	11/4/75	Peterson			
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	3,942,535	3/9/76	Schulman			
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Lit. 1	4,016,651	4/12/77	Kawahara et al.			
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Lit. 1	4,328,593	5/11/82	Sutter et al.			
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Lit. 1	4,349,921	9/21/82	Kuntz			
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Lit. 1	4,653,486	3/31/87	Coker			
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Lit. 1	4,713,004	12/15/87	Linkow et al.			
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Lit. 1	4,877,020	10/31/89	Vich			
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EXAMINER

DATE CONSIDERED

EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.

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